

JOHN E. BARRON, JAMES PORTER, AND A. A. L. H. CRENSHAW.

[To accompany Bill H. R. No. 813.]

JUNE 4, 1860.

Mr. BURCH, from the Committee on the Post Office and Post Roads, made the following

REPORT.

The Committee on the Post Office and Post Roads, to whom was referred the memorial of John E. Barron, James Porter, and Aaron A. L. Crenshaw, respectfully submit the following report:

That a mail-route was established by act of Congress, running from Independence, in the State of Missouri, to Stockton, California, 3d of March, 1855.—(See vol. 10, Statutes at Large, p. 714.) That on the 31st day of December, 1857, the Postmaster General invited proposals for monthly service on said route, and Jacob Hall having bid the sum of \$79,999 per annum, and that being the lowest bid, the contract was awarded to him, and bond and security for the faithful performance of the service was given. That before service had been commenced, and at the request of Jacob Hall, and with the assent of the Postmaster General, the contract was transferred to said Barron, Porter, and Crenshaw, and bond and security were given by them for the performance of service on said route at the said annual compensation of \$79,999, and service was commenced on said route on the 1st October, 1858. That the contractors purchased and placed upon said route 197 mules and horses, 8 coaches, 12 wagons, with sets of six-mule harness for each coach and wagon, and a complete outfit for mail service on the plains. That they had employed in the carrying of the mails and in the erection of suitable stations on the route some fifty hands. That, on account of the high price of provisions, it cost to subsist the hands in their employment on the route an average of \$45 per month between Santa Fé and Stockton, and that the average wages of the hands amounted to about \$45 per month. That the animals purchased by the contractors, and in use on said route, were of the average value of \$150 (one hundred and fifty dollars) per head, and that on account of the high prices of grain and hay, and the distance to which it had to be transported to supply some of the stations, the average

cost per day of subsisting the animals amounted to forty cents per head. That the route was a new one, upon which service had been placed for the first time on the 1st of October, 1858, and that the country through which it passed, west of the Rio Grande to Fort Tejon, in California, was uninhabited, and for a time service was interrupted on said route by the hostilities of the Indians; but that great expense was incurred and energy manifested by the contractors in establishing their posts, stocking the road, and making ample arrangements for the transportation of the mail, according to contract, for four years, and that the service was performed to the satisfaction of the Post Office Department, as appears by payment, without fine or deduction, for the entire service, during the continuance of the contract. That after the contractors had so stocked the road, built their stations, and before any time had been allowed them to reimburse the outlay, the Postmaster General stopped the service and annulled the contract, without assigning, in his order of discontinuance, any reason therefor, and, in pursuance of his order, the service was stopped on the 1st day of July, 1859; the postmaster at Stockton having refused to give the mails to the contractors after that date. That the contractors having no use for the mules, coaches, harness, &c., sold the entire stock on hand at a loss of over fifty per cent. There is presented by the contractor a detailed statement of the cost of stocking said route, and the expense of running it until the annulment of the contract, in which it is alleged that said contractors had expended, on said route, the sum of \$154,548 41, and had received by the sale of property on the road and mail pay under the contract the sum of \$89,199 71, which, deducted from the expenditures, leaves in their estimate an actual loss of the sum of \$65,348 70.

It also appears that, under the 53d section of act of Congress approved March 3, 1855, many locations had been selected and surveyed and improved with a view to entry, and that land warrants had been purchased for that purpose, and that, after the annulment of the contract, the right to enter any of these lands was refused to the contractors by the proper officers of the land offices in Kansas; that the contract was a profitable one, and, had the contractors been permitted to perform it, at the end of four years their profits would have amounted to \$160,000, as alleged by them. The contractors claim that they are entitled to a restoration of the service, with payment of the actual loss sustained by them, or to the profits which would have resulted to them on performance of the contract had they been permitted to fulfil it. Under this state of facts, the first question which presents itself to the consideration of the committee is, whether the contract has been violated on the part of the United States or not. This question, at an early day, was presented to the consideration of the committee in the case of Thomas F. Bowler, and it was held, as appears by the report of the committee, that the annulment of the contract by one party, without any fault of the other, was such a violation of the contract as entitled the innocent sufferer to a full indemnity for the actual loss sustained by him without any reference to the question of profits; but, if the right should exist in the Postmaster General to destroy at his pleasure the contracts of his predecessor, no just government would

exercise, or permit others to exercise, such a power to the ruin of the citizen without repayment of the actual losses sustained.

It being conceded that the contractors are entitled to relief, the true rule by which the amount of that relief should be ascertained yet remains to be considered, and upon this point the committee are not without the light of adjudicating cases presenting points somewhat analogous. In the case of *Gilbert Cameron vs. The United States*, before the Court of Claims, after part performance of the contract by Cameron, it was improperly annulled by the United States, and he was prevented from completing the contract. In the able opinion of the court, delivered by Scarburgh, judge, the following rule was laid down: "What (say the court) is the measure of relief to which the petitioner is entitled? The sum stipulated in the contract is not due him because he did not do the work for which that sum was to be paid him, but he is entitled to a reasonable compensation for all work done and materials furnished by him, and also to a sum of money equivalent to the profits which he would have made upon the work, which he was not permitted to do, if he had done it."—(See opinion, page 15.) Under this rule the right of the contractors to the profit on their contract, amounting, as claimed by them, to the sum of \$160,000, seems to be sustained by high authority; but as the committee have heretofore come to the conclusion that the discontinued service ought to be restored, and a bill has passed the House of Representatives to that effect and will probably pass the Senate, it is not now important to consider further that branch of the case. The committee are of the opinion that, whether service is or is not restored on this route, the *actual loss sustained* by the contractors arising out of the annulment of the contract ought to be paid them. The amount of losses claimed by them, as will appear by reference to the accounts, amounts to the sum of \$65,348 70, which includes some forty mules stolen by the Indians during the continuance of said contract and before the stock could be withdrawn from the route. On a careful examination of the account, the committee are of the opinion that the item of \$14,500 paid as a bonus on the transfer of the contract ought not to be allowed, as it did not arise out of the annulment of the contract. The item of \$4,000, interest paid on money borrowed, cannot be allowed for the reason that interest at the rate of six per cent. has been paid to the contractors under the act passed at this session of Congress. The item also of \$1,294 for arms and \$375 for ammunition is also rejected, in conformity with the action of the committee in the case of *Thomas F. Bowler*. The difference between the cost and present value of 2,560 acres of land warrants, amounting to \$896, is also disallowed for the reason that the contractors had no business to purchase land warrants until they had ascertained the land could be entered by them. The sum claimed for provisions stolen (\$1,000) is disallowed, the contractors having taken the contract with a full knowledge of the dangers attending the service; and, further, its allowance is more properly a subject for the consideration of the Committee on Indian Affairs.

The sum of \$667 41 for one of the agents going to and returning

from California is also disallowed, it being covered by the month's extra pay allowed after the service was withdrawn.

The sum total of claims disallowed amounts to \$22,732 41, which deducted from \$65,348 70, claimed in the memorial, leaves the sum of \$42,616 29 due to the contractors for the actual loss sustained by them, and is allowed by the committee upon the presumption that the service will be restored; for, on a restoration of this service, whatever profit is in the contract will be realized by the contractors, and the right to pre-empt lands under the 53d section of the act of 3d March, 1855, will be revived by said restoration. Should the act not pass restoring the service, an amendment to the bill will afford the requisite relief to the contractors.

Under this view of the case, the committee report a bill for the sum of \$44,283 70, the amount of actual losses sustained as allowed by the committee, and recommend its passage.